

March 31, 2016

VIA E-MAIL - SGMPS@water.ca.gov

California Department of Water Resources
Attn: Lauren Bisnett, Public Affairs Office
P.O. Box 942836
Sacramento, CA 94236

Subject: Draft GSP Emergency Regulations Public Comment

Dear Ms. Bisnett:

On behalf of Kanawha Water District, Glide Water District, Princeton-Codora-Glenn Irrigation District, Provident Irrigation District, Colusa County Water District and Dunnigan Water District (the "Districts"), we are submitting comments on the Department of Water Resources' ("DWR") Draft Groundwater Sustainability Plan Emergency Regulations ("Draft Regulations") released on February 18, 2016. The Districts are located within the Colusa Subbasin, 5-21.52, that includes areas within Tehama, Glenn, Colusa and Yolo Counties. Each of the Districts has submitted a notice that they will act as a Groundwater Sustainability Agency ("GSA"). The boards of directors of each of the Districts took this action in large measure on the basis of their decades-long, and in the case of the two irrigation district, a century, management of water resources within their respective service areas. Throughout their histories, and with more intensity in the recent dry years, this has included close cooperation on both ground and surface water issues with neighboring water agencies, private pumpers and other interested parties.

Thus the Districts offer their comments and recommendations in an effort to improve the Draft Regulations to better reflect the goals and purposes of the Sustainable Groundwater Management Act ("SGMA") and more effectively facilitate the local development of Groundwater Sustainability Plans ("Plans" or "GSPs"). In certain subject areas, the Draft Regulations create standards that are inconsistent with SGMA. DWR should clearly identify the purpose and need for any element of GSP content that exceeds a strict reading of the statute.

All six Districts are members of the Association of California Water Agencies ("ACWA"). They have reviewed and join in ACWA's comments on the Draft Regulations. There are a few comments, however, that we would like to underscore related to the discussion of coordination agreements in Article 8 of the Draft Regulations.

SGMA specifically allows for the implementation of multiple GSPs by multiple GSAs in a single basin so long as those plans and agencies are coordinated by a single coordination agreement for the entire basin. (Wat. Code, § 10727(b)(3).) The Draft Regulations propose requirements that would eliminate this option for local agencies where multiple GSAs are each developing coordinated plans. This is particularly relevant to the Districts and to the Colusa Subbasin, a basin that stretches over four counties, with potentially dozens of GSAs, and that has widely varied groundwater conditions. We recommend that the following sections be revised to allow for local flexibility, while still achieving the goal of coordinated management within each basin:

§ 350.2(a): The Plan individually or as a set of coordinated Plans must achieve the sustainability goal for the entire basin within 20 years of Plan implementation without adversely affecting the ability of an adjacent basin to implement their Plan or achieve their sustainability goal.

§ 351(i): “~~Coordinating~~Submitting Agency” refers to a groundwater sustainability agency or other authorized entity that represents two or more Agencies or Plans for a basin and is the sole point of contact with the Department.

§ 351(u): “Plan” refers to a groundwater sustainability plan as defined by in the Act. As appropriate in these regulations, the term “Plan” also refers to a series of plans adopted by Agencies pursuant to a coordination agreement. The status of a Plan may change as follows ...

§ 354.20: Each Agency may define one or more management areas within a basin if local conditions for one or more critical parameters differ significantly from those of the basin at large, and if the Agency has determined that subdivision into management areas will facilitate implementation of the Plan. Management areas may have different minimum thresholds and be operated to different measurable objectives than the basin at large, provided that the goal of the Plan or coordination agreement pursuant to Water Code section 10727.6 is to achieve sustainable management for the entire basin by the target date and that operation to different standards within a management area does not produce undesirable results elsewhere.

§ 355.4(a)(3): An initial Plan will be deemed inadequate unless it satisfies all of the following conditions . . . (3) The Plan covers the entire basin or is subject to a coordination agreement pursuant to Water Code section 10727.6 that covers the entire basin.

§ 355.10(a): Disputes within a basin shall be the responsibility of the ~~Coordinating~~Submitting Agency or other entity or entities responsible for managing Plans and alternatives within that basin.

§ 357.4(b): Intrabasin coordination agreements ~~shall~~may establish or identify a Submitting Agency that ~~shall be~~ may serve as the single point of contact with the Department.

§ 357.4(e): ~~Each Agency shall submit to the Submitting Agency all Plans, Plan amendments, supporting information, all monitoring data and other pertinent information, along with annual reports and periodic evaluations.~~

§ 357.4(d)(c): ~~At the option of the participating agencies, The Submitting Agency shall compile and rectify data and interpretations regarding basin conditions provided by the Agencies and produce a single report synthesizing and summarizing that information into a coherent and credible account of basin conditions. Reports produced by the Submitting Agency~~ Any Plan subject to a coordination agreement pursuant to Water Code section 10727.6, including any amendment, annual report or five-year assessment for such a Plan, shall include the following:

(1) An explanation of how the Plans implemented together satisfy the requirements of the Act and are in substantial compliance with this Subchapter.

~~(2) An explanation of how the Plans have been integrated using the same data and methodologies to provide useful information regarding the following:~~

~~(A) Hydrogeologic conceptual models, as described in Section 354.12.~~

~~(B) State of the basin, as described in Section 354.14.~~

~~(C) Water budgets, as described in Section 354.16.~~

~~(D) Undesirable results, minimum thresholds, measurable objectives, as described in Subarticle 3 of Article 5.~~

~~(E) Monitoring networks, and monitoring objectives, as described in Subarticle 4 of Article 5.~~

~~(F) Projects and management actions, as described in Subarticle 5 of Article 5.~~

§ 357.4(d)(4): ~~Reports produced by the Submitting Agency shall accompany the initial Plan, any amendment to the Plan, annual reports, and the five-year assessment by each Agency within the basin.~~

§ 357.4(e): Intrabasin coordination agreements shall describe the responsibilities of each Agency for meeting the terms of the agreement, the procedures for the timely exchange of information between Agencies and with the Submitting Agency, if applicable, and procedures for resolving conflicts between Agencies.

§ 357.4(g): The intrabasin coordination agreement shall be submitted to the Department together with the Plans for the basin and, ~~if approved,~~ shall become part of the Plan for each participating Agency.

§ 357.4 (h): The Department shall evaluate the coordination agreement for compliance with the procedural and technical requirements of this section, ~~to assure that the Agreement is binding on all parties, and that provisions of the Agreement are sufficient to address any disputes between or among Agencies that are party to the agreement.~~

The Districts recognize that under SGMA, DWR must evaluate Plans to determine whether they are likely to achieve the sustainability goal, but from the standpoint of assisting local agencies, who are most informed and attuned to the tangible conditions in their areas. DWR can effectively do so in a manner that fulfills the legislative intent to manage groundwater “through the actions of local governmental agencies to the greatest extent feasible.” (Wat. Code, § 10720.1(i).) The Districts provide these comments and recommendations in an effort to allow DWR to satisfy its obligations under SGMA in a manner that achieves statewide groundwater sustainability but with the local control and flexibility that the Legislature recognized is critical to the long-term success of SGMA’s historic, fundamental shift in groundwater management in the State.

Thank you for considering our comments.

Sincerely yours,

DOWNEY BRAND LLP



J. Mark Atlas



Arielle O. Harris

cc: Clients
ACWA (c/o David Bolland)